

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-02-DL-290
	)	
B&H Broadcasting Systems, Inc.	)	NAL/Acct. No.200332500001
Owner of Unregistered Antenna Supporting	)	
Structure Located Near Dekalb, Texas	)	FRN 0001-7226-77
Texarkana, Arkansas	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** October 7, 2002

By the Enforcement Bureau, Dallas Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find B&H Broadcasting Systems, Inc. ("B&H"), owner of an unregistered antenna supporting structure located near Dekalb, Texas, apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 17.4(a) of the Commission's Rules ("Rules").<sup>1</sup> Specifically, we find B&H Broadcasting Systems, Inc. apparently liable for failing to register its antenna structure near Dekalb, Texas.

**II. BACKGROUND**

2. On June 10, 2002, the Commission's Dallas Field Office ("Dallas Office") received a report of an unlit and unregistered antenna structure near Dekalb, Texas, belonging to FM radio broadcast station KZRB. The Commission's Antenna Structure Registration database showed no registered antenna structures within a two mile radius of the licensed geographical coordinates 33° 24' 54"N / 094° 38'10"W for radio station KZRB, nor any structures registered to B&H Broadcasting Systems, Inc. An agent with the Dallas Office located Federal Aviation Administration ("FAA") study 95-ASW-1807-OE for a 499-foot tower located at geographical coordinates 33° 24' 54.4"N / 094° 38'10.7"W. The FAA study specified medium intensity strobe lighting. The study was conducted for B&H.

3. Still on June 10, 2002, the agent contacted Mr. Ray Bursey, owner of radio station KZRB. Mr. Bursey stated that the structure had been registered when they upgraded the station and constructed the tower. The Commission's database shows that B&H applied for a license to cover the construction of KZRB at its present licensed location on December 16, 1996. Mr. Bursey was not able to document that an application for tower registration had been submitted.

4. On September 12, 2002, a search of the Commission's Antenna Structure Registration database still showed no registered antenna supporting structure within a two mile radius of the licensed geographical coordinates 33° 24' 54"N / 094° 38'10"W for radio station KZRB, nor any antenna supporting structure registered to B&H Broadcasting Systems, Inc.

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<sup>1</sup> 47 C.F.R. § 17.4(a).

### III. DISCUSSION

5. Section 17.4(a) of the Rules requires the owner of an antenna structure that required notice to the FAA to register the antenna structure with the Commission. B&H's antenna structure required FAA notification because it exceeded 200 feet in height.<sup>2</sup> From at least December 16, 1996 through September 12, 2002, B&H owned an antenna structure that required notice to the FAA, and thus required Commission registration, yet B&H failed to register the structure.

6. Based on the evidence before us, we find B&H willfully<sup>3</sup> and repeatedly<sup>4</sup> violated Section 17.4(a) of the Rules by failing to register its antenna supporting structure.

7. Pursuant to Section 1.80(b)(4) of the Rules,<sup>5</sup> the base forfeiture amount for failure to file required forms or information (i.e. failure to file an application for antenna structure registration) is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup> Considering the entire record and applying the factors listed above, this case warrants a \$3,000 forfeiture.

### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>8</sup> B&H Broadcasting Systems, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 17.4(a) of the Rules by failing to register its antenna supporting structure.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, B&H Broadcasting Systems, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the

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<sup>2</sup> See 47 C.F.R. § 17.7(a).

<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>4</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to B&H Broadcasting Systems, Inc., 3720 County Avenue, Texarkana, Arkansas 71854.

#### FEDERAL COMMUNICATIONS COMMISSION

James D. Wells  
Dallas Office, Enforcement Bureau

Attachment

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<sup>9</sup> See 47 C.F.R. § 1.1914.